

## PROCEEDINGS OF THE STURGIS CITY COUNCIL

The Common Council of the City of Sturgis met in regular session starting at 6:00 p.m. on Monday, June 15, 2015 at the Erskine Building. Present: Mayor Mark Carstensen, Alderpersons Jason Anderson, Mike Bachand, Branden Bestgen, Rod Bradley, Tony Dargatz, Adam Martin, and Ronald Waterland. Also present: City Manager Daniel Ainslie and City Attorney Greg Barnier. Absent: David Hersrud.

Motion by Bachand, second by Martin and carried with all members present voting yes to approve the agenda.

Motion by Martin, second by Bestgen and carried with all members present voting yes to go into executive session for 2 legal cases, 1 personnel and 2 contracts at 6:00 pm.

Motion by Bestgen, second by Anderson and carried with all members present voting yes to return to regular session at 6:29 pm.

Mayor Mark Carstensen led everyone in the Pledge of Allegiance.

### Announcements:

- Sturgis Arts Council held a reception honoring Dale Lamphere, SD Artist Laureate chosen by Gov. Dugaard, on Sunday, June 14<sup>th</sup> from 2-4 at Lamphere Studio, 21079 Cardinal Place at Pleasant Valley.
- On June 29<sup>th</sup> the Department of Transportation will be setting new speed limits for our area.
- There will be a Wild West Day parade on Saturday, June 20<sup>th</sup> at 11:00 am.
- History Day at the auditorium will be on Saturday, June 20<sup>th</sup> from 8:00 am to 5:00 pm.

### Informational Reports:

- Planning Commission Minutes – 6/2/15
- Library Board Minutes – 5/27/15

### City Manager Ainslie reported:

- Appointment of Mike Bachand as council representative to the Sturgis Rally Charities Foundation and Senior Center Council.
- The budget numbers for the end of May 2015 are as follows: General Fund is at 38.6%; SST 69.4%; Capital Imp 45.6%; Liquor 30%; Water 40.7%; Wastewater 37.7%; Sanitation 44.7% and Ambulance 39.9%. Total budget at 47.7%
- Payroll Changes – within budget: Rally & Events Dept – rally registration attendant – Laurel Hansen-Neisen - \$8.50. Rally info booth attendant – Leona Zastrow - \$9.25; Larry Vissia - \$8.50. Planning & Permitting Dept – rally tattoo inspector – Darcie Dennard, Jennifer Parrow, Erin Williams - \$13.00. Rally vendor inspector – Janis Mathis-Anderson, Stacey Ross, Connie Snow, Jamalee Stone - \$10.50; Colin Zilverberg - \$10.00. Community Center Dept – full-time custodian – Don Rourke - \$12.19 plus grant one year of service; rally custodian – Jeremy Gutierrez, \$10.00. Water Dept – water operator – Russ Abernathy – transfer from streets – no wage change; Brad Deutsch - \$23.56; Meter Reader – Nikki Kubo – to full-time – no wage change. Police Dept – police reserves – Don Gibbs, Andrew Marshall, Phill Ryan, Ron Ledford, Jucole Jones, Mike Albright, Erich Orris, Breandan Harvey – no wage. Public Works Dept – seasonal streets – Cain Fritz - \$8.50, rally \$10.50 (7-27 to 8-9)

Motion by Bestgen, second by Martin and carried with all members present voting yes to approve the following items on the consent calendar with the exception of removing “g” and “e” for discussion:

- a. Approve the minutes from the June 1, 2015 regular Council meeting.
- b. Consideration to approve setting a public hearing for July 6, 2015 for a special events license for the Knuckle Saloon on 8-1-15 to 8-8-15 at Indian Motorcycle, 2130 Main.
- c. Consideration to approve setting a public hearing for July 6, 2015 for a special events license for One-Eyed Jacks Saloon at City Park on July 28-Aug 8, 2015.
- d. Consideration to approve Resolution 2015-49 – Plat for SEDC Hansen Drive/Sturgis Industrial Park.

**RESOLUTION 2015-49  
RESOLUTION APPROVING PLAT**

**WHEREAS**, the statutes of the State of South Dakota require that plats of property within the jurisdiction of the City of Sturgis be submitted to the governing body for approval before the same are recorded in the Office of the Register of Deeds; and

**WHEREAS**, the City of Sturgis Planning and Zoning have presented to the Common Council of the City of Sturgis a plat of the following described real property for Sturgis Economic Development Corp:

Plat of Lot C4-A1 and Lot C4-A2 of Sturgis Industrial Park Subdivision.  
Formerly Lot C4-A of Sturgis Industrial Park Subdivision Located in the NE1/4  
of the SW1/4 of Section 6, Township 5 North, Range 5 East, Black Hills  
Meridian, City of Sturgis, Meade County, South Dakota.

**WHEREAS**, said plat meets the requirements of the statutes in all things, now therefore,

**BE IT RESOLVED** by the Common Council of the City of Sturgis, South Dakota, that the within and foregoing plat is hereby approved.

Dated this 15<sup>th</sup> day of June, 2015.

Published: 06/24/2015

Effective: 07/15/2015

- e. ~~Consideration to approve a Memorandum of Agreement to join the Black Hills Library Consortium.~~
- f. Consideration to approve Resolution 2015-50 – Authorization of Submittal of a SD DOT Trails Grant.

**RESOLUTION 2015-50  
RESOLUTION TO DESIGNATE TRAILHEADS AND AUTHORIZE SUBMISSION OF  
A SOUTH DAKOTA FEDERAL LANDS ACCESS PROGRAM GRANT APPLICATION**

**WHEREAS**, the City of Sturgis supports and encourages the construction and enhancement of trails throughout our City and in the surrounding governmental lands; and,

**WHEREAS**, such trails create a significant enhancement in the quality of life of residents and helps to create additional tourist attractions; and,

WHEREAS, the City continues to partner with Black Hills Trails on the development and enhancement of trails throughout the community.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Sturgis designates three trailheads, Lions Club, Old Stone and Deadman, authorizes the submission of South Dakota Federal Lands Access Program Grant application and pledges the necessary local match for said grant application.

Dated this 15<sup>th</sup> day of June, 2015.

Published: 06/24/2015

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~~g. Consideration to approve use of city property for the NH Ag Festival Event on August 11, 2015.~~

- h. Approval to transfer funds to make loans for TIF Districts and H-D Rally Point. General Fund to TIF #11 Fund - \$402,000; Water Fund to TIF #11 Fund - \$1,503,000; General Fund to TIF #13 - \$498,000; Wastewater Fund to EcDev/Revolving Loan Fund - \$200,000 (to pay back Advance); General Fund to Capital Improvement Fund - \$37,500 (Brick sales, not a loan) General Fund to Capital Improvement Fund - \$410,000; and EcDev/Revolving Loan Fund to Capital Improvement Fund - \$400,000.

Councilor Bradley asked if City Attorney Barnier had reviewed the Library Consortium agreement. Barnier replied yes. Motion by Waterland, second by Bradley and approved with all members present voting yes to approve a Memorandum of Agreement to join the Black Hills Library Consortium.

Councilor Bachand was concerned with the timing of the NH Ag Festival Event and that staff would not have time to do this. The event coordinator will be doing the labor for this event, and the City will provide the City property. Motion by Bestgen, second by Martin and carried with all members present voting yes to approve the use of city property for the NH Ag Festival Event on August 11, 2015.

Motion by Martin, second by Waterland and carried with all members present voting yes to approve the following claims:

**Wages** – Ambulance \$31,061.98; Attorney \$3491.54; Auditorium \$167.79; Buildings \$1019.92; Cemetery \$1911.64; City Manager \$4680.49; Community Center \$8972.57; Finance Office \$8360.25; Fire Department \$410.61; Human Resource \$2687.92; Library \$8228.21; Liquor \$4967.15; Mayor and Council \$3450.94; Parks \$15,114.61; Planning & Permitting \$4378.23; Police \$36,283.04; Rally \$7275.14; Recreation \$2952.22; Sanitary Service \$12,207.86; Streets \$11,750.07; Wastewater \$8267.83; Water \$11,678.20; Federal Withholding \$17,295.38; FICA \$13,737.81.

**Combined Cash Fund** – Cash Change, \$10,410.00

**General** – A & B Business, \$291.84, sup; Daniel Ainslie, \$500.00, ins; Amcon Distributing, \$174.81, resale; Lane Barden, \$60.00, prof fee; Bentz Equipment, \$448.97, rep; Black Hills Chemical, \$2,180.63, sup; Black Hills Harley Davidson, \$2,322.26, other; Black Hills Power, \$12,588.34, util; Black Hills Urgent Care, \$300.00, prof fee; Christopher Brock, \$161.25, refund; Butte Electric, \$493.02, util; Campbell Supply, \$525.60, sup; Caselle, \$1,479.00, prof fee; CBH, \$16,972.66, sup; Century Business Products, \$80.83, sup; Chain Saw Center, \$162.00, sup; City of Sturgis Water Dept, \$2,965.69, util; Coca Cola, \$755.10, sup; Dakota Hardware, \$412.24, sup; Ecolab Pest Eliminator, \$355.98, rep; MasterCard, \$2,304.88, other; Freeman's Electric, \$283.18,

rep; Goldmine International, \$571.25, other; Hersrud Co., \$66.05, rep; Hillyard, \$485.36, sup; Jenner Equipment, \$31.69, rep; KT Connections, \$1,569.28, prof fee; Tyler Kaitfors, \$25.00, ins; Kevin Klug, \$60.00, prof fee; Lacal Equipment, \$4,655.09, rep; Legends Sales & Marketing, \$4,500.00, prof fee; Lynn's Dakotamart, \$150.19, sup; Marco, Inc., \$23.05, rep; Meade County Auditor, \$6,536.07, other; Meade County Times Tribune, \$983.48, pub; Menards, \$608.00, sup; Midcontinent Communications, \$41.00, util; Mobile Mini, \$83.97, sup; MDU, \$5,262.68, util; Neve's, \$173.90, sup; Northern Hills Vet Clinic, \$249.46, prof fee; Northwest Pipe Fittings, \$2,121.80, sup; Oreilly Auto Parts, \$491.34, sup; Owens Interstate Sales, \$246.09, sup; Pizza Hut, \$89.02, sup; Print Mark-et, \$983.96, pub; Purchase Power, \$500.00, sup; Rasmussen Mechanical Services, \$2,166.03, rep; Robert Sharp & Associates, \$3,398.60, pub; Rockingtree Floral, \$440.00, sup; Rushmore Office Supply, \$822.77, sup; Sacrison Asphalt, \$801.00, sup; Sam Erion Construction, \$867.00, sup; Sand Creek Printing, \$183.00, sup; Nancy Scheider, \$10.00, refund; Schwans, \$26.57, resale; Servall Towel & Linen, \$348.28, rep; Shopko Stores, \$170.75, sup; Sturgis Napa, \$531.72, rep; Sturgis Veterinary Hospital, \$846.16, prof fee; Cindy Swenby, \$157.94, membership; Textile Printing Co, \$2,299.50, sup; The Homeslice Group, \$658.00, sup; Town-n-Country Plumbing, \$473.46, sup; Twilight First Aid & Safety, \$167.80, sup; Vast Business, \$161.37, util; Verizon, \$250.44, util; Warne Chemical, \$1,564.00, other; West River Electric, \$661.05, util.

**Capital Improvement** – Fourfront Design, \$15,169.53; Rasmussen Mechanical Services, \$11,775.00; Rushmore Office Supply, \$649.50; Sturgis Volunteer Fire Dept, \$20,832.00. Liquor – Arctic Glacier, \$404.92, resale; Black Hills Chemical, \$120.89, rep; Black Hills Rally & Gold, \$586.00, resale; Cask & Cork, \$484.00, resale; Century Business, \$2.03, sup; First Interstate Bank, \$6,000.00; City of Sturgis Water Dept, \$266.14, util; Coca Cola Bottling, \$615.00, resale; Eagle Sales, \$20,752.09, resale; Ecolab Pest Eliminator, \$107.00, rep; First Interstate Bank, \$895.17, other; Fisher Beverage, \$10,477.04, resale; Johnson Western Wholesale, \$54,464.74, resale; KT Connections, \$67.93, prof fee; MDU, \$29.91, util; Pepsi Cola, \$318.25, resale; Print Mark-et, \$57.89, pub; Republic Beverage, \$39,675.77, resale; Rushmore Office Supply, \$313.64, sup; Servall Towel & Linen, \$152.30, sup; Textile Printing Co, \$10,475.50, resale; The Homeslice Group, \$9,493.06, pub.

**Water** – Black Hills Urgent Care, \$30.00, prof fee; Butte Electric, \$183.60, util; Century Business Products, \$42.73, sup; City of Sturgis Water Dept, \$107.89, util; Mobile Mini, \$41.98, sup; MDU, \$126.99, util; Northwest Pipe Fittings, (\$19.89), sup; Print Mark-et, \$57.89, pub.

**Wastewater** – City of Belle Fourche, \$63.42, other; City of Sturgis Water Dept, \$22.19, util; Dakota Hardware, \$2.99, rep; Fastenal Co, \$75.69, sup; First Interstate Bank, \$40.27, sup; KT Connections, \$67.93, prof fee; Mid-American Research, \$2,031.25, rep; Owens Interstate Sales, \$53.93, rep; Print Mark-et, \$57.89, pub; Sturgis Napa, \$412.35, rep; Verizon, \$46.72, util.

**Sanitation** – A & J Surplus, \$144.96, rep; Campbell Supply, \$113.00, sup; CBH, \$1,546.27, sup; Century Business Products, \$98.81, prof fee; City of Belle Fourche, \$20,457.84, other; Eddies Truck Sales, \$119.02, rep; Great Western Tire Co, \$317.08, sup; Hersrud Co, \$200.19, rep; Inland Truck Parts, \$30.87, rep; KT Connections, \$67.93, prof fee; Owens Interstate Sales, \$39.96, rep; Print Mark-et, \$57.89, pub; Rushmore Office Supply, \$18.99, sup; Sturgis NAPA, \$142.39, rep.

**Ambulance** – Black Hills Urgent Care, \$30.00, prof fee; CBH, \$1,842.96, sup; City of Sturgis Water Dept, \$85.09, util; Coca cola, \$51.20, sup; Dakota Hardware, \$32.02, sup; Emergency Medical Products, \$174.05, sup; First Interstate Bank, \$804.63, sup; Foothills Home Medical Equipment, \$180.00, sup; KT Connections, \$67.93, prof fee; Kreisers, Inc., \$1,872.68, sup; Lynn's Dakotamart, \$355.63, sup; MDU, \$61.59, util; Moore Medical, \$622.26, sup; Print Mark-et, \$57.89, pub; Purchase Power, \$267.10, sup; Regional Health, \$535.58, sup; Rushmore Communication, \$528.50, sup; Rushmore Office Supply, \$271.92, sup; Shopko Stores, \$15.96, sup; Spearfish Ambulance, \$56.00, prof fee; Sturgis Napa, \$541.39, sup; VAST Business, \$79.05, util; Verizon, \$22.02, uti; Weimer's Diner & Donuts, \$16.20, sup; Wes River International, \$148.59, sup.

Motion by Waterland, second by Martin and carried with Carstensen, Anderson, Bestgen, Dargatz, Martin and Waterland voting yes, Bachand voting no, Bradley abstaining, to approve a retail on-off sale wine license for Sturgis Trading Post dba The Bank Saloon at 1100 Main St.

Motion by Waterland, second by Dargatz and carried with Carstensen, Anderson, Bestgen, Dargatz, Martin and Waterland voting yes, Bachand voting no, Bradley abstaining, to approve an addition to location of the malt beverage license for The Sturgis Trading Post dba The Bank Saloon at 1100 Main St.

Motion by Martin, second by Dargatz and carried with Carstensen, Anderson, Bestgen, Dargatz, Martin and Waterland voting yes, Bachand voting no, Bradley abstaining, to approve an On-Off Sale Malt Beverage and Off-Sale Malt Beverage Renewal for 2015-2016 for Joseph Lupo – The Sturgis Trading Post, LLC dba The Bank Saloon.

Motion by Martin, second by Anderson and carried with all members present voting yes to approve a zoning amendment from Highway Service to General Commercial for the property at 1018 Lazelle Street for Ian McCain (LaMacchia Group).

Motion by Bradley, second by Martin and carried with all members present voting yes to deny a use on review for Dawgs Hideaway, Keith Kerr, for a temporary business at 1102 Junction Ave.

Motion by Bestgen, second by Waterland and carried with all members present voting yes to approve a 6' zoning variance for a front yard setback for Jack and Edna Smith at 1320 Vanocker Drive for a mobile home.

Motion by Dargatz, second by Bestgen and carried with all members present voting yes to approve a 13' zoning variance to the front yard setback for Mary Bryant at 1706 Lazelle St for a roof over a deck.

Motion by Waterland, second by Bachand and carried with Carstensen, Anderson, Bachand, Bestgen, Dargatz, Martin and Waterland voting yes, Bradley abstaining, to approve a special events liquor license for the Knuckle Saloon at the City of Riders Reception Tent, Harley-Davidson Expo and Sturgis Liquors on July 27 to August 12, 2015.

Motion by Bachand, second by Bestgen and carried with all members present voting yes to approve second reading of Ordinance 2015-07 – Title 31 – Licensing of Temporary Businesses.

## **ORDINANCE 2015-07**

### **AN ORDINANCE AMENDING TITLE 31–LICENSING OF TEMPORARY BUSINESSES**

BE IT ORDAINED by the Common Council of the City of Sturgis, Meade County, South Dakota that Title 31 Licensing of Temporary Businesses –Chapter 31.01 – General Provisions; Section 31.01.01 – Scope and Purpose, 31.01.02 – Definitions, and 31.01.03 – Penalty and Chapter 31.02 Licensing and Regulation of Vendors, Peddlers, Solicitors, Transient Businesses, Trades and Merchants, Section 31.02.01 – Sales and Marketing within the Right of Way, 31.02.02 – Peddling in Park, 31.02.03 – Licensing of Vendors, Peddlers, Solicitors, Transient Businesses, Trades and Merchants, 31.02.03.01 – Vendor License Required, 31.02.03.02 – Application, 31.02.03.03 – Property Vending Map, 31.02.03.04 – Fee and Duration of License, 31.02.03.05 – Issuance, 31.02.03.06 – Prohibition of Sale of Glass Beverage Containers and Products, 31.02.03.07- Exemptions from the Vendor License Fee be amended to read as follows:

## **TITLE 31 LICENSING OF TEMPORARY BUSINESSES**

### **CHAPTERS:**

31.01: General Provisions

31.02: Licensing and Regulation of Vendors, Peddlers, Solicitors, Transient Businesses, Trades and Merchants

### **CHAPTER 31.01 GENERAL PROVISIONS**

#### **SECTIONS:**

31.01.01: Scope and Purpose

31.01.02: Definitions

31.01.03: Penalty

#### **31.01.01: SCOPE AND PURPOSE**

SDCL 9-34 provides the authority for municipal licensing of many non-traditional businesses which can have a negative impact the health and public safety of residents of a municipality. That legislation specifically allows municipalities to build, maintain and operate public marketplace so to provide a venue for such temporary business. In addition, the legislature allow municipalities in South Dakota to license and regulate activities such as exhibitions, second hand stores, tattoo services, piercing services, fortune tellers and mind readers, auctioneers, transient merchants, peddlers, solicitors, pawnbrokers, ticket scalpers and food preparation and sales. The City of Sturgis, population of about 6,700, is home to one of the largest tourist event in the U.S., the annual motorcycle rally. It is an event that in the past decade has had an annual attendance estimated to range from 250,000 persons to perhaps over 500,000 persons participating. Tourists travel from across the United States and from other parts of the world to be in the Sturgis community area each year for it. They come to participate in the buying and selling of many and varied items, to attend concert activities, to camp and to travel throughout western South Dakota, and to meet others from around the world and socialize in a unique tourist environment.

The City of Sturgis is considered the center of the Rally, and faces significant responsibilities in hosting this large event every year. The primary focus of the municipal activities is to provide a safe, healthy and friendly atmosphere that will allow the Rally to flourish and grow. To accomplish that, the City incurs costs each year of over \$700,000. Those costs are incurred to provide needed trash collection, recycling, water service, sewer service, adequate police and public safety staff, necessary ambulances service and similar needed services. To offset those very substantial costs and avoid an unfair burden on property tax payers in the community, the City has adopted and revised this ordinance to follow that statutory authority to license and assess fees to those who vend, sell, display and market during the annual rally. It is the intent of the Council, in following that statutory authority, that those who operate temporary businesses and who are the primary beneficiaries of the business and marketing that results from a stable Rally venue will bear the majority of the costs associated with providing and maintaining that safe venue each and every year.

#### **31.01.02: DEFINITIONS**

- A) VENDOR: For the purpose of this Section, a vendor is any person, firm, corporation, partnership or association or business as defined by SDCL45-10-1, or operating as a retailer as defined in SDCL45-10-1, not operating within the city for at least three (3) consecutive calendar months prior to the official start day of the rally as documented with sales tax return records documenting payment by the vendor of municipal sales tax for those months for the City of Sturgis of more than \$500 at that location within the City and who, in conjunction

with an event of more than four (4) consecutive days within any twelve (12) day time span, engages in temporary or transient business in the City selling or displaying goods, wares, merchandise or services, or a permanent business person, firm or corporation which is located within the City limits who, for more than four (4) consecutive days within any twelve (12) day time span, is selling or displaying such goods, wares, merchandise or services, away from its or its usual operating place of business and who, for the purpose of carrying on such business, hires, leases, or occupies any room, building, structure, or space for the exhibition or sale of such goods, wares, merchandise, or services. The person, firm or corporation so engaged in business as defined by SDCL 45-10-1, or operating as a retailer as defined in SDCL 45-10-1, shall not be relieved from the provisions of this Section by reason of association with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant or auctioneer.

- B) VENDING AREA: This is defined as the area in which all of the related and supportive activities for the operation of a business granted a temporary business license under this Title can be found. The area shall include the area for keeping all materials, equipment, inventory, components and other items related to the temporary business. This definition shall also include any area used by the business to assemble, display, market, demonstrate or provide a tryout of any of the goods or services displayed, offered for sale or otherwise made available to consumers the licensed temporary business. The definition shall also include the area for meeting with potential or actual clients, buyers, or customers, and shall also include the space needed to prepare the goods or services for transfer to the client, buyer or customer, as well as all of the area used in any manner for preparing, cooking, serving or consuming any food or other consumable product offered for sale to purchasers or given away at no charge to Rally attendees.  
The common area shared by written agreement between three or more food vendors for their customers to be seated at tables and eat the food products they have purchased from those vendors shall not be included as Vending Area.
- C) YEAR: A twelve (12) month period.
- D) BUSINESS: The activity of buying & selling.
- E) OPERATION: In action, functioning, conducting business as defined within SDCL 10-45-1 or acting as a retailer as defined within SDCL 10-45-1.
- F) EVENT: An organized occurrence or happening where the City provides extraordinary services, including but not limited to sanitation services, law enforcement or traffic control.

### **31.01.03: PENALTY**

A violation of this ordinance may occur daily, and shall be punishable by a civil penalty of 80% of the combined cost of a Vendor License and the Special Sanitation Fee, plus a separate administrative fee of \$75.00, to be paid before a Vendor License can be issued to the vendor in violation. To avoid additional civil penalty fees for each separate day of operation violation of this ordinance, the vendor shall be required to obtain a valid Vendors License from the City Finance Office within 12 hours of the issuance of the Citation. No right to appeal this penalty to the City Council shall exist until the full payment of the penalty assessed against the Vendor has been paid to the City and verified by the Finance Office. Any Vendor exercising the right to appeal this penalty provision shall file its request for refund within 30 days of the issuance of the license, and the Vendor may appear in person at the time of the public hearing before the Council, or may be represented by an attorney licensed to practice in South Dakota. In addition to statements by the Vendor during such public hearing, the Council shall consider and determine the credibility of any written material in regard to the appeal submitted to the Council prior to the close of the public hearing.

Any vendor found to be operating without a Vendor License and Special Sanitation Fee twice within a 24 month period shall be prohibited from obtaining a Vendor License in the future unless the

Vendor License application is accompanied by combined payment of the administrative penalty and administrative fee set forth in the preceding paragraph, for each separate violation of this ordinance. Any person or entity who is required to obtain a Vendor License and Special Sanitation Fee and who knowingly allows an unlicensed vendor to conduct or engage in business on property they own or which is subject to their control shall be prohibited from obtaining a Vendor License for a period of 400 days after the date of violation.

In addition to the civil penalty and administrative fee set forth above, a violation of this Title is a Class 2 Misdemeanor, punishable by the maximum punishment set forth by the laws of the State of South Dakota pursuant to SDCL 22-6-2.

In addition, any violation of the provisions of this Title may result in the revocation and/or suspension of any license issued pursuant to any Section of this Title.

## **CHAPTER 31.02**

### **LICENSING AND REGULATION OF VENDORS, PEDDLERS, SOLICITORS, TRANSIENT BUSINESSES, TRADES AND MERCHANTS**

#### **SECTIONS:**

- 31.02.01: Sales and Marketing within the Right of Way
- 31.02.02: Peddling in Parks
- 31.02.03: Licensing of Vendors, Peddlers, Solicitors, Transient Businesses, Trades and Merchants
  - 31.02.03.01: Vendor License Required
  - 31.02.03.02: Application
  - 31.02.03.03: Property Vending Map
  - 31.02.03.04: Fee and Duration of License
  - 31.02.03.05: Issuance
  - 31.02.03.06: Prohibition of Sale of Glass Beverage Containers and Products
  - 31.02.03.07: Exemptions from the Vendor License Fee
  - 31.02.03.08: Refund Fee for Transient Merchant License
  - 31.02.03.09: Required Documentation of Sales Activities

#### **31.02.01: SALES AND MARKETING WITHIN THE RIGHT OF WAY**

No person may display, market, offer in exchange for donation or sale, or sell any goods, services or merchandise in person or from a cart, wagon, automobile, truck or other vehicle in the streets, thoroughfares, or while within any other public Right of Way, of the City. This Section does not apply to the delivery of farm or garden products, where the order for same was placed in advance, nor does it apply to drayage or the delivery of goods sold in the regular course of an established business. Nothing in this paragraph shall prohibit the City from entering into a contract for the sale of ice cream and sundries for immediate sale on conditions agreed to by the Common Council, or prohibit the City Council from adopting a resolution to allow the display or sale of lottery tickets or other goods or services in the Public Right of Way. Any qualifying organization or group as defined in Title 25.02.02 must submit an application, consistent with the requirements of Title 25.02.11, to the Finance Office at least 90 days prior to the proposed starting date for such display or sale. Except as set forth in this subsection, the City Council may adopt such an authorizing resolution for a non-profit organization only for qualified display or sale activities which occur during an Event lasting more than four (4) days within a twelve (12) day time period.

For an event to be located within the Downtown Business Improvement District, the City Council may authorize such use of public Right of Way located within the Downtown Business Improvement District by a vote of the majority of the Council. For an event lasting not more than four days located outside the Downtown Business Improvement District, the City Council may



authorize such use of designated public Right of Way, after notice and public hearing, by the adoption of a Resolution by a majority of the City Council approving such use.

### **31.02.02: PEDDLING IN PARKS**

It shall be unlawful for any peddler or other person excepting a person occupying a portion of the park under a valid concession agreement to display goods or services, sell or offer to sell, to any person within any municipal park of the City, any goods, wares, merchandise, books, pictures, novelties, souvenirs or trinkets or any other article of commerce and trade, including goods of his own production or manufacture. This provision shall not include sales by the City or any organization having an approved lease agreement with the City.

### **31.02.03: LICENSING OF VENDORS, PEDDLERS, SOLICITORS, TRANSIENT BUSINESSES, TRADES AND MERCHANTS**

#### **31.02.03.01 Vendor License Required**

Any firm, person, or corporation which intends to operate a temporary business as set forth in the definition of Vendor in this Title within the corporate limits of the City of Sturgis in conjunction with an event of more than four (4) consecutive days within any twelve (12) day time span shall be required to purchase a vendor license for each structure, stand, tent, vehicle, booth, location or place which is used by such merchant for the sale or distribution of goods. The person so engaged shall not be relieved from the provisions of this Section by reason of association with any local operating business, dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant, auctioneer or business. The vendor license must be posted in each individual vendor location during operation.

#### **31.02.03.02 Application**

To obtain a license, an applicant shall file, in the office of the City Finance Officer, a verified application stating his or her name, and residence, description and identification of the place in which he or she proposes to do business, dates of operation, name, address, phone number and e-mail address of property owner where business will take place and, the description of the goods he or she intends to handle. Applicant's valid South Dakota State sales tax number shall be included as part of the application, and any application submitted without a valid Sales Tax license number will not be processed for issuance of a temporary vendor license. A South Dakota State Department of Health license, when required for applicant's business, shall also be presented at the time of application.

#### **31.02.03.03 Property Vending Map**

Starting January 1, 2014 any property owners seeking to place vendors licensed under this Title on property zoned GC-1, HS-1, RV (14 day only), Public Land or Fairgrounds, shall file at the City Finance Office a 8 1/2 x 11 scale map of the potential vending area based on the parcel ID number for the subject property as established by the Meade County Equalization Office, and having attached to it a second sheet consisting of a diagram showing the dimensions of the potential vending area to be licensed.

- a) For all property owner maps filed at the City Finance Office prior to April 1 of each year, there shall be no filing fee.
- b) For all property owner maps filed at the City Finance Office between April 1 and May 31<sup>st</sup> of each year, the filing fee shall be \$250.00.
- c) For all property owner maps filed at the City Finance Office between June 1 and July 15 of each year, the filing fee shall be \$500.00.
- d) For all property owner maps filed at the City Finance Office after July 16 of each year, the filing fee shall be \$1000.00.

Each applicant for a vendor license shall submit a file-stamped copy of a scale map for the property parcel upon which the applicant proposes to operate if licensed. The applicant shall include with the application material written confirmation that the property owner, a designated representative of the owner as on file with the City Finance Office, knows the applicant is seeking a vendor license to operate on a parcel owned by the property owner. The file stamped map copy submitted by the applicant show the dimensions and location of the area applicant seeks to have licensed for temporary vending.

#### **31.02.03.04 Fee and Duration of License**

- A) A temporary business shall pay a Vendor License fee based on location and size of the overall vending area as set forth below together with the Special Sanitation Fee at the rate established and required by Title 11 of Sturgis City Ordinances for each twelve (12) consecutive day period, or portion thereof, in any calendar year. The combined fee shall be paid at the Finance Office at the time the application is submitted for approval. The Finance Officer shall note on the license the time period for which it is effective. A business may purchase only two (2) vendor licenses per location per twelve (12) month period.
- B) The license fee for each vending area, for payment of both the Vendor License fee and the Special Sanitation fee, shall be as follows:
1. Vending area of 100 square feet or less, \$560.00
  2. Vending area of 101 to 400 square feet, \$850.00
  3. Vending area of 401 to 800 square feet, \$1000.00
  4. Vending area of 801 to 1200 square feet or less, \$1200.00
  5. Vending area of more than 1200 square feet, \$1500.00

Each vending area separated by a distance of three (3) feet or more from another vending area shall be subject to a separate license fee. Regardless of any shared resources, expenses or any corporate affiliation or other cooperative business activities, each temporary business shall be required to obtain a separate temporary business license.

#### **31.02.03.05 Issuance**

Upon receipt of the application and payment of the fee described in this section and final approval, the Finance Officer shall issue a license to the applicant to operate as a vendor at a place described in the application and for the time for which the license fee has been paid in advance. Any applicant that has had their license issued who subsequently changes location and submits an amended application to show that change shall be charged a supplemental administrative fee of \$100.00 to obtain an amended license. Any vendor that changes location without obtaining an amended license as provided herein shall be subject to the penalty provisions set forth at section 31.01.03 of this Ordinance. This supplemental administrative fee shall also apply to organizations which are exempt from the Vendor License fee but are subject to the Special Sanitation fee imposed by ordinance 11.03.21.

#### **31.03.06 Prohibition of Sale of Glass Beverage Containers and Products**

All Vendors licensed under this Title, and business as defined by SDCL45-10-1, or operating as a retailer as defined in SDCL45-10-1, shall be strictly prohibited from offering for sale or making available to the public any beverage in a glass container which would allow consumption of the beverage outside of the licensed vending area of the Vendor.

#### **31.02.03.07 Exemptions from the Vendor License Fee:**

The exemptions to the requirement to purchase a vendor license are stated in paragraphs A through E below. Regardless of any shared resources, expenses, corporate affiliation or

relationship, other cooperative business activities, or any contract or agreement between businesses, each temporary business shall be required to obtain a separate business vendor license. Each vending area separated by a distance of three (3) feet or more from another vending area shall be required to obtain a separate license fee.

All Sale, display, marketing or similar activities that are not specifically described within the following definitions shall not qualify for an exemption from the Vendor License fee.

- a) Sales where the applicant has demonstrated by verifiable documentation that the proceeds are to be used exclusively for religious, charitable or benevolent purposes. Written proof of such religious, charitable, or benevolent non-profit status as declared by the IRS (i.e. 501(c)(3) documentation) and compliance with the notice provisions of SDCL 22-25-25(6) when required, must be presented when the application is submitted.
- b) Sales to wholesale or retail merchants, by sample, for future delivery made by representatives or established wholesalers or manufacturers.
- c) The sales of fruits, vegetables or farm or garden products in their natural state.
- d) Sales by youth age 15 years and under of lemonade and like items and incidentals occurring at and within the boundaries of property at they reside, shall be exempt from the Temporary Vendor License and Special Sanitation fees.
- e) Parking lots on private property, when Vendor License application states that parking of vehicles is the only sales or marketing activity to be conducted on the premises identified in the Vendor application, shall be exempt from the Temporary Vendor License and Special Sanitation fees.
- f) A Qualified Vendor, that has submitted a complete application as required by subsection 31.02.03.02 of this Title that documents through copies of South Dakota sales tax returns for the location within the City at which the Vendor seeks exemption, that the Vendor has paid an aggregate amount of at least \$500 municipal sales tax in the three consecutive calendar months immediately preceding the date of submission of the application, and the Vendor operates in all other respects in compliance with all state and federal laws and local

#### **31.02.03.08 Refund Fee for Transient Merchant License**

The City of Sturgis is hereby authorized to refund up to 50% of a Temporary Vendor License fee, provided that written notice from the applicant requesting that the license be cancelled is received at the City Finance Office ten (10) days prior to the official start day of the event.

#### **31.02.03.09 Required Documentation of Sales Activities**

It is the responsibility of the Transient Merchant to maintain the necessary records to comply with the minimum state requirements of sales tax reporting and municipal ordinances as applied to a business operator or retailer as defined in South Dakota Codified Law 10-15-1, as well as a sales tax licensee. Evidence and documents to show proof of compliance with these requirements shall be provided by the retailer, business operator or licensee immediately upon the request of any authorized representative of the South Dakota Department of Revenue, any law enforcement officer or any municipal official appointed by the City Manager to enforce this title. The records to be maintained are the following:

- a) Sales receipts that are sequentially numbered with duplicate copies recorded during or immediately upon completion of each transaction, in the form of cash register tape, written or printed credit card receipts, or hand written sales receipts that identify the item sold, the sale price, the tax charged and the time and date of the transaction.
- b) Inventory records, including a statement of beginning inventory of merchandise, for a minimum of three years preceding the date of inspection of the transaction record, consistent with the requirements of SDCL 10-45-85.

- c) A written list of suppliers, including names, addresses and phone numbers of the supplier, for all suppliers used by the licensee for the three years preceding the date of inspection of the supplier list, consistent with the requirements of SDCL 10-45-87.  
A violation of this provision shall follow the penalties described in Section 31.01.03.

Dated this 15th day of June, 2015.

First reading: 06-01-2015  
Second reading: 06-15-2015  
Adopted: 06-15-2015  
Published: 06-24-2015  
Effective: 07-15-2015

Motion by Bestgen, second by Bradley and carried with Anderson, Bestgen, Bradley, Bachand, Dargatz, Martin and Waterland voting yes, Carstensen voting no, to deny all three raffle applications (Chopper motorcycle, 1973 Charger car and guitar) from the Ebenezer Church.

Motion by Bestgen, second by Bradley and carried with all members present voting yes to deny an application for a raffle for various prizes from Cruise for a Cause.

The following bids were received for the Starline Park: Iverson Construction – Base bid-\$80,721, Alt. 1-\$8,610, Alt. 2 - \$11,860. SECO – Base bid-\$88,700, Alt. 1-\$8,100, Alt. 2-\$11,100. Ainsworth-Benning – Base bid-\$92,200, Alt. 1 - \$7,945, Alt. 2 - \$10,350.  
Motion by Waterland, second by Anderson and carried with all members present voting yes to approve the low bid from Iverson Construction which will include Alternate 1 and 2 for Starline Park.

Motion by Bestgen, second by Bradley and carried with all members present voting yes to approve Resolution 2015-51 – Approve changing West Main St from Lazelle to 11<sup>th</sup> St to One Way East Bound Traffic only from July 29 to August 9.

**RESOLUTION 2015-51**  
**RESOLUTION TO APPROVE CHANGING WEST MAIN STREET FROM LAZELLE**  
**TO 11<sup>TH</sup> STREET TO ONE WAY EAST BOUND TRAFFIC ONLY**

WHEREAS, the Sturgis® Motorcycle Rally™ will be held in the City of Sturgis, August 3, 2015 through August 9, 2015; and

WHEREAS, the anticipated increase of pedestrian traffic in this area due to the creation of the Indian Motorcycle complex creates a higher level of safety concern; and

WHEREAS, this intersection is an area where historically several accidents have occurred and where the potential is greater in 2015 due to the increased congestion on Lazelle; and,

WHEREAS, the Chief of Police and the Public Works Director have expressed a concern about the narrow street in this area.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Sturgis approves changing West Main Street from Lazelle to 11<sup>th</sup> Street to one way for east bound traffic only from 6 am Wednesday, July 27<sup>th</sup> through 6 am Sunday, August 9<sup>th</sup>, 2015.

Dated this 15<sup>th</sup> day of June, 2015.

Published: 06/24/2015

Effective: 07/15/2015

Motion by Bradley, second by Adam and carried with Martin, Carstensen, Bradley and Anderson voting yes and Dargatz, Bachand, Waterland and Bestgen voting no to approve Resolution 2015-52 – Authorize Closure of Kinship Street from July 31 to August 8, 2015. With this Motion being a tie, Martin made a motion, second by Anderson to table the resolution until the next meeting.

Motion by Bradley, second by Waterland and carried with all members present voting yes to approve first reading of Title 30 – Signage.

Public Works Director Bush gave a power point presentation of design options for drainage on Anna Street to Harmon Street. Director Bush asked the Council to email him with the two designs they prefer and the direction they want him to go. This will be a 2016 project.

Motion by Bestgen, second by Martin and carried with all members present voting yes to table Resolution 2015-53 – Annexing Mako and Lippold Properties and approval of the lease with Mako Enterprises for a liquor annex until the June 22, 2015 special meeting.

Motion by Waterland, second by Bradley and carried with all members present voting yes to approve setting a public hearing for July 6, 2015 for an off-sale liquor license for the City of Sturgis for a liquor annex at the corner of Hwy 79 and Glencoe Drive.

Any other business:

Russ Keaton asked that there should be more discussion on Rally issues, openness in the meetings, the ability to see the Harley Davidson contract, a cost benefit analysis on this contract.

Councilor Bestgen asked about providing informational points on the Harley Davidson contract. This will be discussed at Legal and Finance.

Motion by Bestgen, second by Anderson and carried with all members present voting yes to go into executive session for personnel and contracts at 9:20 pm.

Motion by Bestgen, second by Waterland and carried with all members present voting yes to return to regular session at 10:00 pm.

Motion by Waterland, seconded by Bradley and carried with all members present voting yes to adjourn the meeting at 10:01 pm.

ATTEST: \_\_\_\_\_  
Fay Bueno, Finance Officer

APPROVED \_\_\_\_\_  
Mark Carstensen, Mayor

Published once at the total approximate cost of \$667.49.